

Office of Real Estate Services - Project Development Guide

Chapter 1

Introduction to Federal-aid Right-of-Way Project Development

This Project Development Guide (PDG) is designed to provide information necessary to complete a typical Federal-aid highway right-of-way (ROW) project. If the ROW being acquired is part of a larger project, a few things may change, particularly with regard to closing the project. The PDG traces the development of a basic transportation project that is subject to Federal requirements. The user should keep in mind that certain details of the development of a ROW project may be unique to the acquiring agency and/or the project. Therefore, consultation between the Federal Highway Administration (FHWA), state Department of Transportation (DOT), and the local public agency (LPA) is critical to assure full understanding of Federal law, regulations, etc. Unless otherwise noted, the provisions for the state DOT apply to LPAs. Federal regulations consider the LPA to be a state agency and, as such, the Federal requirements for state agencies apply to LPAs that wish to use Federal funds in its transportation project. To assure compliance with Federal regulations, please consult with the appropriate FHWA division office for clarification when necessary or for additional information.

The text for the PDG has been developed as a reference for those responsible for completing the acquisition of realty for a transportation project. Information is arranged in a sequential order, based on the typical project development process. The format presents data in the following order: Federal laws; regulations; policies; procedures; implementation through policy interpretations, and best practices.

The PDG has been prepared to improve program delivery and efficiency in the development of ROW projects, particularly those on the Federal-aid highway system. This guide reflects the needs expressed by state and local governments interested in better understanding the Federal-aid ROW project development process as it relates to their operations. Program complexity, changes in law, regulations, and policy prompted us to provide additional guidance on the ROW project development process.

The FHWA has developed this PDG to assimilate available guidance in a single location. The PDG is intended to expand the understanding of the linkage between Federal-aid highway programs and procedures and the development of a ROW project. In order to convey this intent the objectives of this guide are basically five-fold:

- To improve program delivery of Federal-aid funds in the ROW acquisition phase of the Federal-aid highway program.
- To examine existing FHWA project development procedures and explore and emphasize the flexibility available to acquiring agencies responsible for implementation.
- To present best practices of state and local agencies and others in the ROW field and,

through technology transfer, share such information with all acquiring agencies.

- To provide a mechanism to share innovative concepts and ideas concerning effective project development activities developed by state or local agencies, the FHWA, or others.
- To discuss new policy areas and innovative techniques we can use to enhance our acquisition and property management programs.

The user must keep in mind that his/her fundamental responsibility requires that the state laws and regulatory requirement must be met. This guide is not intended to alter this responsibility or priority.

1.1. FEDERAL/STATE RELATIONSHIP

The FHWA relationship with state and LPAs operating under the Federal-aid highway program has historically been a close working relationship. As such there are responsibilities on the part of all sectors to foster good public relations while striving to adhere to the ultimate goal of building highways.

The operation of the ROW program from the Federal perspective includes the maximum delegation of authority to our field offices and the states. This level of authority offers the greatest possible innovation and flexibility to administer the ROW program. In this regard, the state approved ROW procedures (operations) manual is an important device.

In the Federal regulations, **agency** is considered to be any governmental agency which acquires property. Under Section 302 of Title 23, United States Code (U.S.C.), a compilation of all Federal highway acts, the state DOT is responsible for all Federal-aid highway projects under the Federal/state relationship, including those projects administered at the county or city level. The state DOT is the authority responsible for establishing appraisal, acquisition, relocation program, and other requirements for Federal-aid highway projects. From the FHWA perspective, cities or counties have the option of accepting the state DOT procedures or submitting their own to the DOT for approval if they desire to deviate from the DOT's accepted procedures unless state law or administrative policy requires otherwise. How this is done is a state and LPA matter outside of the purview of the FHWA (except in an advisory capacity) although the FHWA is very interested in the state and LPA agreeing on an acceptable procedure for acquisition on Federal-aid projects. Per 23 Code of Federal Regulation (CFR) 710.201(b), the FHWA requires the state DOT to ensure that Federal requirements are met at the local level. Therefore, the LPA's procedures are to comply with Federal requirements, even if they have been approved to deviate from the state DOT approved ROW procedures.

As discussed in chapter 2.2, individual states have over the years, enacted eminent domain laws governing public acquisitions under their jurisdiction. In addition, agencies within states have promulgated regulations to facilitate their acquisition programs.

Some LPAs may only take possession of property after the completion of condemnation proceedings.

ADDITIONAL RESTRICTIONS

Since the Federal government enacted the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and the passage of the various state consent laws, basic public acquisition policy has become more uniform. However, a number of states have enacted laws and regulations that go beyond Federal law and provide property owners entitlements that are higher than the amounts set in Uniform Act. Because of the variations in the eminent domain laws among the states, it is important that individuals dealing with public acquisition of private property be intimately familiar with the applicable state laws and implementing regulations.

Per 23 CFR 710.201(b) and (c), in order to receive Federal-aid reimbursement, the approved state DOT ROW procedures must assure compliance with Federal requirements.

FEDERALLY ASSISTED STATE PROGRAMS

It is FHWA policy that the state DOT is ultimately responsible for the acquisition activities of local acquiring agencies on Federal-aid projects. It is advisable, therefore, that the state and the local acquiring agency work closely together during the entire acquisition and relocation process, both to expedite acquisitions and to assure that all Federal and state requirements are met. Normally, the state DOT has a larger, more experienced staff which can serve as a valuable resource for the local acquiring agency.

1.2. PROJECT DEVELOPMENT PROCESS

The project development process can be divided into five process categories or work activities. The following outline is provided to assist in conceptualizing the process that takes place during a ROW project for the acquisition of private properties for public purposes.

A. Planning

- Environmental impacts and public involvement (ch. 2.5)
- ROW plan (ch. 5.3)
- Title documents (ch. 5.2)
- Lead time (ch. 2.6)
- Certification requirements (ch. 13)

B. Appraisals

- Appraisal requirement (ch. 7.1)
- Owner accompaniment (ch. 7.4)
- Acquiring agency valuation approval (ch. 7.7)
- Appraisal report formats and scope of work (ch. 7.2)
- Waiver valuation (ch. 7.5)
- Fair market value and just compensation (ch. 7.6)
- Appraiser qualifications (ch. 7.8)
- Appraiser's certificate (ch. 7.3)
- Appraisal review responsibilities (ch. 8)
- Appraisal review considerations (ch. 8.1)
- Review appraiser qualifications (ch. 8.2)

C. Acquisition

- Prompt written offer (ch 9.1 and ch 9.2)
- Accelerated negotiations (ch. 9.3)
- Payment before possession (ch. 9.4)
- Summary statement (ch. 9.5)
- 90-day notice to vacate (ch. 9.6)
- Uneconomic remnants (ch. 9.8)
- Owner retention of improvements (ch. 9.9)
- Administrative settlements (ch. 11.1)
- Legal settlements (ch. 11.2)
- Court awards (ch. 11.3)

D. Relocation Process

- Planning (ch. 10.1)
- Notices (ch. 10.2)
- Relocation assistance advisory services (ch. 10.3)
- Payments (ch. 10.4)
- Housing of Last Resort (ch. 10.5)

E. Property Management

- Pre-construction - during acquisition phase (ch. 12.1)
- Post-construction (ch. 12.2)

1.3. SUMMARY OF THE ACQUISITION PROCESS

One of the fundamental precepts of acquiring private property for public purposes is that an owner of private property must be paid just compensation as required by the Constitution of the United States. The fifth amendment of the Constitution provides that private property may not be taken for public purposes without the payment of just compensation.

The Constitution also requires the states to follow due process when they acquire privately owned property.

On January 2, 1971, Public Law 91-646, the Uniform Act was signed into law. This law was amended in 1987, as part of the Surface Transportation and Uniform Relocation Assistance Act. The Uniform Act applies to all real property acquisitions for projects where Federal funds are involved. All agencies acquiring property with Federal funds must be familiar with the provisions of this Act as well as applicable state law. The regulation that implements the Uniform Act, 49 CFR Part 24, was revised on January 4, 2005.

No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

**FIFTH AMENDMENT
U. S. CONSTITUTION**

The Uniform Act defines what an acquiring agency must do to assure that property owners are receiving their constitutionally mandated reimbursement. Noncompliance with Federal law can result in ineligibility for reimbursement of project cost.

The Uniform Act contains three titles:

- Title I contains the general provisions of the law
- Title II covers uniform relocation assistance
- Title III concerns uniform real property acquisition

Acquiring agencies are also subject to the laws and requirements of their state as well as any applicable local ordinances. State and local requirements must be followed but are not included within this guide. Consult with your state program representative for specific guidance.

1.4. SENSITIVE RIGHT-OF-WAY ISSUES

In today's government, whether Federal, state, or local, the subject of public accountability is the focus of constant attention. The ROW field involves dealing with the public on various important personal (to the property owners and occupants on a project) issues regarding the acquisition of land, property, and the relocation of occupants. Because of the personal and sensitive nature of these issues, they also tend to

In the past there have been major scandals identified by former congressman Blatnik and others who have shown that the highway ROW program is susceptible to fraud, waste, abuse, and mismanagement. The Office of the Inspector General and the General Accountability Office have identified potential weaknesses in the various programs

be emotional ones that can create very unique situations. These, in turn, can delay or even stop a project, thereby damaging the credibility of the acquiring agency and its staff.

What is most important when dealing with the public is good business practices and honesty. While it is true that the government sector is not profit motivated as is the business sector, public agencies are responsible for the infusion of huge sums of money into the economy. Wherever or whenever money is involved there is the potential of, or possible perception of fraud, waste, abuse, and mismanagement.

administered by FHWA. While these oversight activities have not shown any current widespread abuses or deficiencies there is always the specter of their presence in the field of ROW because of the nature of the programs. Agencies buy real estate with taxpayer dollars and manage the acquired property until and sometimes after highway projects are built. Therefore, ROW acquisition, relocation assistance, and property management are critical program areas that demand full and public accountability.

ACCOUNTABILITY

Public accountability begins with the individual responsibilities of the ROW agent and how he or she carries out those responsibilities on the job. ROW agents must be particularly sensitive to the consequences of conflict of interest laws and procedures in their state.

The risks are so great and the penalties so severe that any gains attained through conflict of interest are not worth it. ROW agents and their agencies must be on constant guard against even the slightest perception that their activities could be challenged under conflict of interest. The fact that the perception of wrongdoing is often as detrimental as a clear infraction must be recognized and remembered as being of particular importance in ROW issues.

Basic FHWA ROW program regulations are contained in 23 CFR Part 710.